

EXHIBIT 9

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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NIKE, INC.,

Plaintiff,

vs.

CASE NO. 1:22-CV-00983-VEC

STOCKX LLC,

Defendant.

VIDEOTAPED DEPOSITION OF SARAH BUTLER
San Francisco, California
Tuesday, August 15, 2023

Stenographically Reported by: Ashley Soevyn,

CSR No. 12019

Job No. 5968272

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1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

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5 NIKE, INC.,

6 Plaintiff,

7 vs.

CASE NO. 1:22-CV-00983-VEC

8 STOCKX, LLC,

9 Defendant.

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15 Videotaped Deposition of
16 SARAH BUTLER, taken on behalf of the Plaintiff Nike,
17 Inc., Pursuant to Notice, at the offices of DLA
18 Piper, 555 Mission Street, San Francisco, California
19 beginning at 8:56 a.m. and ending at 4:51 p.m. on
20 Tuesday, August 15, 2023, before me, ASHLEY SOEVYN,
21 Certified Shorthand Reporter No. 12019.
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25

1 Design analysis and critique of surveys
2 use to measure consumer perceptions,
3 and the materiality of advertising
4 claims."

5 Are you offering an expert opinion in
6 this matter related to those categories?

7 A Yes. The survey that I designed
8 evaluates the materiality, or the impact of the
9 authentication statements that Nike has alleged are
10 misleading to consumers.

11 Q And are you offering an opinion in this
12 matter related to a survey that measures consumer
13 perceptions?

14 A I have not conducted a consumer
15 perceptions survey in this matter, no.

16 Q What types of surveys have you used to
17 measure materiality of advertising claims? Can you
18 describe them?

19 A Not sure what you mean by types of
20 surveys.

21 Q Okay. You don't have a way to describe
22 them, or do you call them by a certain name?

23 A No, I mean, I think it depends on what
24 you're trying to evaluate what the claims are, what
25 hypothesis you're testing.

1 Q Okay. What type of materiality of the
2 advertising claims in this case, what kind of
3 surveys did you design?

4 A So I designed a survey that has both the
5 test and a control to evaluate whether the
6 authentication statements would have an impact on
7 consumers purchasing intentions.

8 Q And would you describe that type of
9 survey with a certain name?

10 A I think I probably describe it as I just
11 described it.

12 Q Okay. Are you familiar with the term
13 "purchase interest survey"?

14 A As a general description, sure.
15 Questions that evaluate consumers' purchase
16 interest. Those are types of questions one can ask,
17 yes.

18 Q Is it fair to say that you conducted a
19 purchase interest survey in this case?

20 A Again, I mean, I think the survey has an
21 experimental component, so it evaluates and isolates
22 the impact of particular statements related
23 certainly to consumers' purchasing intentions.

24 Q Have you designed -- actually, strike
25 that. Let me ask that a different way.

1 A Well, I think as I articulate in
2 paragraphs eight and nine, I was asked to respond to
3 a portion of Mr. Hansen's report where I believe
4 he -- I quoted in paragraph 8, he asserts, quote,
5 assuming that StockX advertising claims about it's
6 authentication were false and StockX authenticated
7 and facilitated the sale of counterfeit Nike
8 Jordan-branded sneakers, my analysis indicates that
9 StockX has benefited by earning ill-gotten profits
10 derived from falsely and/or misleadingly claiming
11 that every Nike and Jordan-brand good sold on its
12 platform was 100 percent authentic.

13 Q So you were asked to respond to that
14 portion of Mr. Hansen's opinion?

15 A That's correct.

16 Q And are you offering an expert opinion
17 that responds to that portion of Mr. Hansen's
18 report?

19 A Well, I think as I articulate in
20 paragraph 9, I was asked by counsel to determine
21 whether these allegedly false statements would
22 influence or have an impact on consumers' decisions
23 to purchase sneakers -- or use the StockX platform
24 to purchase sneakers. And I understand that that
25 analysis or the analysis I conducted is in part a

1 response to Mr. Hansen's report.

2 Q So are you offering an opinion that
3 responds to Mr. Hansen's opinion?

4 A I am offering an opinion that is
5 responsive to Mr. Hansen's report in which he makes
6 an assessment that the false and misleading claims
7 had a particular impact on consumer behavior or
8 purchasing intentions.

9 Q And where in Mr. Hansen's opinion does he
10 opine on consumer behavior and purchasing
11 intentions?

12 A Well, I think he is suggesting or
13 indicating that the sales of the particular goods
14 are due to the claims -- here he cites a specific
15 claim, 100 percent authentic.

16 Q I'm not sure that I'm following your
17 answer. Where in Mr. Hansen's opinion is he opining
18 on consumer behavior and purchasing intention?

19 MR. FORD: I will just object to this to
20 the extent you have not provided Ms. Butler with the
21 entirety of Mr. Hansen's opinion.

22 THE WITNESS: Yeah, so I was going to
23 say, I certainly cite the paragraphs in his report
24 that are cited in paragraph 8, but if you would like
25 to provide me with his report, I can take a look at

1 Q A false or misleading allegation? I
2 don't understand.

3 A I'm sorry, a false or misleading
4 statement -- that Nike alleges is false or
5 misleading as to 100 percent authentic.

6 Q So are you offering an opinion that
7 StockX's revenues for sales of Nike or
8 Jordan-branded goods are attributable to something
9 other than the false or misleading advertising
10 claims?

11 A I'm not making an assessment of profits
12 or revenues. I am examining the extent to which
13 these allegedly false statements have an impact on
14 consumers' purchasing decisions.

15 Q And you believe that is responding to an
16 opinion that Mr. Hansen is offering in this case?

17 A Well, I think as I articulate in
18 paragraph 9, my understanding is that it can
19 potentially inform a response to Mr. Hansen's
20 report. And as I articulate in that paragraph, I
21 understand there is another expert who is responding
22 directly to Mr. Hansen.

23 Q What does it mean to "inform a response
24 to Mr. Hansen's report"?

25 A I understand that the data I produced

1 from the survey may be useful in providing another
2 expert with relevant evidence.

3 Q Okay. And so to be clear, you're not
4 responding to Mr. Hansen's expert opinion in this
5 case, right?

6 MR. FORD: Object to form.

7 THE WITNESS: If by responding to his
8 opinion, you mean I am calculating some kind of
9 damages estimate. No, that's not what I've been
10 asked to do. My understanding is that an assessment
11 of the extent to which these authentication
12 statements may impact consumer behavior is a
13 relevant piece of evidence that may also be used to
14 inform a response to doctor -- or, sorry,
15 Mr. Hansen's opinions.

16 BY MR. MILLER:

17 Q Okay, Ms. Butler. I'm not sure I'm
18 following your answer, so let me just ask it again.

19 Are you responding to Mr. Hansen's expert
20 opinion in this case?

21 MR. FORD: Objection to form.

22 THE WITNESS: So I think as I already
23 articulated, I'm not offering an opinion as to
24 damages. That's not my role in this case. I have
25 designed a survey that evaluates whether or not the

1 authentication statements have had an impact on
2 consumer purchasing behavior -- would have an impact
3 on consumer purchasing behavior. And I understand
4 that that evidence is maybe useful in informing a
5 response to doctor -- sorry, Mr. Hansen.

6 BY MR. MILLER:

7 Q Okay, and that -- that response, at least
8 to your understanding, is being offered by Dr. Vigil
9 in this case, correct?

10 A I understand that Dr. Vigil is responding
11 to Mr. Hansen's damages calculations. That's
12 correct.

13 Q And what are you responding to with
14 respect to Mr. Hansen's expert opinion that's being
15 offered in this case?

16 MR. FORD: Objection to form.

17 THE WITNESS: So again, I understand the
18 context of my analysis and survey takes place within
19 an assessment of the extent to which these
20 authentication statements have or have not -- and
21 the survey tests that -- have or have not had an
22 impact on consumer purchasing behavior.

23 Q Sure. I understand that's what your
24 survey set out to test, but what I'm asking for and
25 you haven't answered yet is: What from Mr. Hansen's

1 this case as to whether sales of Nike and
2 Jordan-branded goods on StockX's platforms are
3 attributable to the false and/or misleading claims
4 made by StockX?

5 MR. FORD: Object to form.

6 THE WITNESS: And so, the reason I
7 clarified with the word "data" is I've not been
8 asked to look at sales data. I've been asked to
9 look at whether or not the allegedly false
10 statements have an impact on consumers willingness
11 to use the StockX platform.

12 BY MR. MILLER:

13 Q Okay. Understood. And is that what
14 you've been asked to look at, that assignment
15 responding to the issue of whether or not the sales
16 of Nike and Jordan-branded goods on StockX's
17 platform are attributable to the false and/or
18 misleading claims made by StockX?

19 A And just to clarify, when you say
20 "sales," I'm understanding that to mean actual sales
21 data that have or sales that have occurred. I'm not
22 applying or calculating some rate at which sales are
23 or are not attributable. I've been asked to design
24 a survey to evaluate whether or not these statements
25 have an impact on consumer purchasing behavior and

1 the results show that they don't.

2 Q So if I'm understanding you correctly,
3 you are offering an expert opinion in this case as
4 to whether consumers were interested in purchasing
5 Nike and Jordan-branded goods on the StockX platform
6 because of the false and/or misleading claims made
7 by StockX?

8 MR. FORD: Object to form of the
9 question.

10 THE WITNESS: I don't think that's quite
11 how I'd characterize it. The survey evaluates
12 whether or not the presence or absence of the
13 allegedly false or misleading claims would have an
14 impact on consumers interest in using the StockX
15 website.

16 Q To purchase Nike or Jordan-branded
17 sneakers?

18 A They are certainly shown Nike or --
19 sorry, did you say Jordan --

20 Q Yes.

21 A -- sneakers? They are certainly shown
22 that as part of the survey. So yes, those sneakers
23 are present and held constant in the test and the
24 control.

25 Q Is your survey designed to test consumer

1 advertising claim from the rest of the advertising
2 claims that you were testing?

3 A I'm not sure what you mean by "isolate."

4 Q What do you understand the word "isolate"
5 to mean?

6 A Well, I understand the word "isolate." I
7 don't understand what you mean in the context of the
8 survey. It is shown on a separate page, that is a
9 different page from other pages that were shown.

10 Q So is that how you were able to isolate
11 the 100 percent advertising -- sorry, the 100
12 percent authentic advertising claim from the other
13 advertising claims that you were testing?

14 A Again, not sure what you are intending to
15 mean by isolate. The 100 percent authentic claim
16 was shown as part of the pages that were tested in a
17 survey as it appears in the real world, or had
18 appeared in the real world.

19 Q And is it your opinion that consumers
20 interest in purchasing Nike or Jordan-branded goods
21 on StockX's platform is not attributable to the
22 100 percent authentic advertising claim?

23 A Well, the survey results demonstrate that
24 the authentication claims including -- yeah, the
25 authentication claims or statements including the

1 100 percent authentic statement, does not have an
2 impact on consumers willingness to purchase a pair
3 of sneakers using the StockX platform.

4 Q And again, focusing just on the
5 advertising claim of 100 percent authentic, does
6 your survey measure the impact of that particular
7 advertising claim had on consumer purchasing
8 decisions?

9 A Well, if I understand your question, the
10 survey does measure the extent to which 100 percent
11 authentic as well as other advertising claims had an
12 impact on consumers willingness to purchase sneakers
13 using the StockX platform.

14 Q Okay. But separate from the other
15 advertising claims that tested, does your survey
16 measure the impact that the 100 percent authentic
17 advertising claim had on consumer purchasing
18 decisions?

19 A Well, since the impact is essentially
20 zero that we measure, I mean, you could portion out
21 zero. But zero cut into pieces is still zero, so it
22 doesn't have an impact. I mean, the survey results
23 demonstrate that there is not an impact of using the
24 authentication statements relative to those
25 statements not appearing.

1 Q The first phrase there says:

2 (As read):

3 "To inform response to Mr. Hansen's
4 report."

5 There is a footnote 5, do you see that?

6 A Yes.

7 Q You say in footnote 5:

8 (As read):

9 "I understand that Robert V is
10 responding directly to Mr. Hansen's
11 damages analysis."

12 A Yes.

13 Q Are you responding to Mr. Hansen's
14 damages analysis?

15 A I am not offering a calculation or
16 estimation of damages, no.

17 Q Okay. Are you responding in some way to
18 Mr. Hansen's damages analysis?

19 MR. FORD: Objection to the form of the
20 question.

21 THE WITNESS: Sorry. Again, I understand
22 that the evidence or a survey testing or
23 understanding the extent to which the authentication
24 statements have an impact on consumer behavior can
25 potentially be used to inform a response to

1 Mr. Hansen's report.

2 BY MR. MILLER:

3 Q So the title of your expert report is
4 Expert Rebuttal Report of Sarah Butler, right?

5 A Yes.

6 Q Whose opinion -- whose expert opinion are
7 you rebutting in this matter?

8 MR. FORD: Objection to the form of the
9 question.

10 THE WITNESS: I understand that the work
11 I conducted here is responsive to Mr. Hansen's
12 report.

13 BY MR. MILLER:

14 Q So you are rebutting Mr. Hansen's expert
15 opinion; is that right?

16 A I understand that the work I've done here
17 is responsive to and can enable a response to
18 Mr. Hansen's report.

19 Q Is your expert opinion rebutting
20 Mr. Hansen's opinion in this matter?

21 MR. FORD: Objection to the form of the
22 question.

23 THE WITNESS: Again, to the extent that
24 Mr. Hansen's -- is, and if you would like to show me
25 his report that may be more efficient. But to the

1 extent that he is making an assessment as to the
2 extent to which profits or sales or consumers desire
3 to purchase a particular product is derived from
4 false or misleading statements, the survey that I
5 have done evaluates the extent to which those false
6 or misleading -- allegedly false or misleading
7 statements would have an impact on consumer
8 behavior.

9 BY MR. MILLER:

10 Q Okay. If I could direct you back to
11 paragraph 9 of your expert report. You say that you
12 were:

13 (As read) :

14 "Asked by counsel for StockX to
15 determine the extent to which, if at
16 all, allegedly false statements related
17 to authentication and verification
18 process, hereafter, parenthesis, quote,
19 authentication statements, close quote,
20 close parenthesis, found on StockX's
21 websites during relevant time period
22 influence consumers' decision to use
23 the site to purchase sneakers."

24 Do you see where I'm reading from?

25 A Yes.

1 Q I'm trying to understand why you phrased
2 what your study was testing as influencing
3 consumers' decisions to use the site to purchase
4 sneakers as opposed to influencing consumers'
5 decisions to purchase sneakers?

6 A Because the questions in the survey are
7 related to -- and the stimuli are related to the
8 site, that is advertising the sneakers. It's not
9 asking them as to whether they would, given the
10 exposure, go purchase sneakers at Nordstrom. That's
11 not part of the survey.

12 Q Okay. So your survey is designed to
13 measure the consumer's interest in using the StockX
14 website; is that right?

15 A The survey is designed, and if you look
16 at the exact question, to evaluate the extent to
17 which the exposure to the authentication statements
18 would have some differential impact on consumers
19 likelihood to use the website to purchase a pair of
20 sneakers relative to those statements not being
21 present.

22 Q Okay. And just to be clear, you're not
23 offering an opinion in this case as to consumers'
24 decision to purchase sneakers, correct?

25 A If your question is, is the survey

1 report that I believe the data from my survey can be
2 used to address or can inform a response to.

3 Q So you're not directly rebutting the
4 portion of Mr. Hansen's opinion that you just
5 pointed me to?

6 A I certainly --

7 MR. FORD: Objection to the form of the
8 question. Sorry.

9 THE WITNESS: Apologies. I am certainly
10 providing an opinion that is responsive to an
11 assessment that the profits or sales or consumers --
12 the revenue is all derived from these false and
13 misleading statements. So the impact of the false
14 and misleading statements.

15 Q So your expert report is not titled
16 opinion that's responsive to that portion of
17 Mr. Hansen's opinion, right?

18 A If you're simply asking me what the title
19 of the report is, it's Expert Rebuttal Report of
20 Sarah Butler. And then, I think in paragraph 8, as
21 we've discussed at length, I articulate and
22 reference the paragraph in Mr. Hansen's report -- he
23 has another similar paragraph in his amended report
24 to which I am responding and I explain in paragraph
25 9 what the assignment was.

1 misleading advertising claims have
2 driven the kinds of consumer behavior
3 that is at issue in this case?"

4 MR. FORD: Same objection.

5 THE WITNESS: Not quite sure how to
6 answer that. It's not clear but -- so if the
7 question is: Is paragraph 15 -- again, I'm not
8 clear on the question.

9 But, so, maybe I can clearly state. If
10 you look at paragraph 14, my understanding is that
11 Mr. Hansen's assesses that the -- what his
12 calculation is based on is that the profits are
13 derived from, quote, derived from falsely and/or
14 misleadingly claiming that every Nike and Jordan
15 brand goods sold on it's platform was 100 percent
16 authentic. In paragraph 15, Mr. Hansen's discusses
17 that he's focused on trades in which included a U.S.
18 individual. So my report is responsive to and
19 evaluates the extent to which for U.S. consumers the
20 authentication statements would have an impact on
21 their willingness to use the site to purchase
22 sneakers.

23 Q Okay. And that in your view is a
24 rebuttal to Mr. Hansen's opinion that you pointed me
25 to in paragraphs 14 and 15 of his opening report?

1 A In terms of classifying it as a rebuttal,
2 I certainly understand that I'm evaluating the
3 extent to which these authentication statements have
4 an impact on consumer behavior.

5 Q Okay. You've classified it as a
6 rebuttal, right? That's the title of your report?

7 A The title of the report is Expert
8 Rebuttal Report of Sarah Butler, and I layout in
9 both paragraphs 8 and 9 the context within which I
10 did the work and I also understand that the work
11 that I did may be used by another expert who may
12 respond directly to Mr. Hansen's.

13 Q But you're not responding directly to
14 Mr. Hansen, or are you?

15 A I think as we've discussed in paragraph
16 8, I articulate that the work that I have conducted
17 responds to Mr. Hansen's assumption or calculation
18 that all profits involving a U.S. individual, all of
19 these things are derived from -- that's the language
20 he uses, derived from or a result of the allegedly
21 false misleading statements.

22 Q Okay. And the survey that you designed
23 and implemented in this case and the opinion that
24 you're offering about the results of that survey
25 rebut Mr. Hansen's assumption that all profits